

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

RANDALL L. FRANK, Trustee,

Plaintiff-Appellee,

CASE NUMBER: 99-10333

HONORABLE VICTORIA A. ROBERTS

v.

**STATE OF MICHIGAN, UNEMPLOYMENT
AGENCY, DEPARTMENT OF CONSUMER &
INDUSTRY SERVICES,**

Defendant-Appellant.

ORDER DENYING DEFENDANT-APPELLANT'S MOTION FOR REHEARING

I.

On December 3, 1999, Appellant filed a Motion for Rehearing and Request for Oral Argument. Appellant seeks reconsideration of this Court's November 24, 1999 decision holding that its liens do not attach to preference recoveries. For the reasons explained below, the Court **DENIES** the Motion.

II.

Defendant-Appellant brings its Motion pursuant to Rules 8015 and 8012 of the Federal Rules of Bankruptcy Procedure. Bankruptcy Rule 8015 establishes a time limit on motions for rehearing, but is silent as to the appropriate standards for granting relief. However, because Rule 8015 was derived from Fed.R.App.P. 40, it is appropriate to look to the appellate rule for

guidance. 9 COLLIER ON BANKRUPTCY ¶ 8015.04 at 8015-4 (15th ed. 1993). Federal Rule of Appellate Procedure 40(a) provides in part, "[t]he petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended." Additionally, Eastern District of Michigan Local Rule 7.1(h) sets forth the grounds for motions for rehearing or reconsideration and provides, in pertinent part, that: "The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof." E.D. Mich. L.R. 7.1(h).

In the present case, Appellant argues that the trustee has a duty to all creditors of the estate, and is obligated to realize the maximum recovery for distribution to creditors. Appellant also claims that Congress did not intend to allow courts to limit the reach of statutory liens under state law via preference actions. However, these points were previously considered by the Court, as they were argued either explicitly or implicitly in Appellant's original brief. Appellant has not shown that these points were overlooked or misapprehended, nor has it shown that the Court was misled by a palpable defect whose correction would cause a different result.

Additionally, Appellant claims that under Michigan law, its statutory liens extend to all property of an employer and continue in effect until satisfied. According to Appellant, the bankruptcy code prohibits only the attachment of liens resulting from security agreements, not statutory liens. Moreover, Appellant points out that 11 U.S.C. § 724 contains no requirement that a tax lien be identified to proceeds of a particular property. Again, however, these arguments were made in Appellant's original brief on appeal and were previously considered by the Court. As such, the Court finds that the standards for rehearing or reconsideration have not

been met.

Finally, Appellant points out that the Supreme Court has stated that a trustee is an employer under the relevant law. Nonetheless, the Court must conclude that this holding would not alter the disposition in this case. The Court is of the view that the dual-entity or dichotomy concept is well supported. In particular, the Court is still persuaded by the reasoning of the court in In re Southeast Railroad, 235 B.R. 619 (Bankr. E.D. Tenn. 1996), and finds Appellant's arguments unpersuasive.

III.

In short, Appellant raises issues that were already argued by the parties and considered by the Court. The Court concludes that Appellant has failed to sufficiently demonstrate issues of law or fact that this Court misapprehended, and that it has not shown a palpable defect which, if corrected, would result in a different disposition of the case. The Court also dispenses with oral argument pursuant to Federal Rule of Bankruptcy Procedure 8012 and 8012 (3). Accordingly, the Court **DENIES** Appellant's Motion for Rehearing and Request for Oral Argument.

IT IS SO ORDERED.

/S/
HON. VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

dated: November 24, 1999